

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA, *et al.*,

Plaintiff,

v.

AGRI STATS, INC.,

Defendant.

Case No.: 0:23-cv-03009-JRT-JFD

**DECLARATION OF ERIC SCHOLER IN SUPPORT OF AGRI STATS INC.'S
MOTION TO DISMISS UNDER RULES 12(b)(1) AND 12(b)(6)**

I, Eric Scholer, declare as follows:

1. I am over the age of eighteen (18) and am not a party to this action. If called as a witness, I could and would competently testify to the following based upon my own personal knowledge.
2. I am Vice President of Operations for Agri Stats and the President of Express Markets, Inc. ("EMI"), a wholly-owned subsidiary of Agri Stats, Inc. ("Agri Stats").
3. Agri Stats ceased producing and distributing the benchmarking reports alleged in Plaintiffs' Complaint related to the production of turkey protein for consumption in May of 2019 because there were not enough subscribers to maintain those turkey reports.
4. Agri Stats ceased producing and distributing the benchmarking reports alleged in Plaintiffs' Complaint related to the production of pork protein for consumption in June of 2019 because there were not enough subscribers to maintain those pork reports.

5. Agri Stats did not cease producing the turkey and pork-related reports alleged in Plaintiffs' Complaint because of any litigation risk to Agri Stats from those reports.

6. Agri Stats does not have access to the data necessary to produce the turkey and pork-related reports alleged in Plaintiffs' Complaint because it does not have customers for those reports who will submit such data.

7. Without turkey and pork customers independently providing Agri Stats with their data, Agri Stats does not have the ability to publish turkey and pork-related reports alleged in Plaintiffs' Complaint.

8. Agri Stats has no current plans to resume its production of the turkey and pork-related reports alleged in Plaintiffs' Complaint; Agri Stats cannot plan to produce reports for which it has no data or customers.

9. Should Agri Stats resume the production of reports related to turkey and/or pork products at some unknown point in the future, Agri Stats does not know what data elements would be included in those reports or if such data elements would be consistent with the turkey and/or pork reports alleged in Plaintiffs' Complaint.

10. In January of 2022 the United States requested Agri Stats' assistance in a criminal case styled *United States v. Penn*, No. 20-cr-00125-PAB (D. Colo.), against several executives at chicken producing companies for alleged bid rigging and price fixing.

11. Two Agri Stats employees, Michael Donohue and myself, were served trial subpoenas and identified by the United States as potential live witnesses for the prosecution's case. Agri Stats worked with the United States in the preparation of its

criminal case, and both Mr. Donohue and I voluntarily sat for interviews attorneys and law enforcement agents for the United States.


12. Michael Donohue was interviewed on Friday, February 4, 2022, and I was interviewed on Thursday, February 3, 2022.

13. During my interview, the United States asked me to confirm that the reports produced by Agri Stats could not be used to identify any individual competitor's pricing for its products. I confirmed that was the case.

14. Both Mr. Donohue and I made ourselves available as trial witnesses, but the United States ultimately decided not to call either of us.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 5th day of January 2024 in Fort Wayne, Indiana.


Eric Scholer